IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 860 OF 1987
IN
NOTICE OF MOTION NO. 764 OF 1986
IN
SUIT NO. 749 OF 1986

Shri Narendra Ramniklal Mehta ...Appellant
V/s.
New Globe Shipping Service (P) Ltd.
& Anr. ...Respondents

Ms.Purnima Bhatia for the Appellant.
Mr.B.P. Israni for Respondent No.1.
Mr.U.J. Makhija i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : JULY 30, 2007

P.C. :-

. Heard the learned Counsel appearing on behalf of the appellant and the learned Counsel appearing on behalf the Bombay Port Trust - respondent no.2.

2. The appellant has filed the First Appeal and the Appeal from Order challenging the order passed by the City Civil Court whereby the suit which was filed by the appellant herein for injunction was dismissed on the ground that the said suit was not maintainable before

the City Civil Court and on the same ground, the Notice of Motion taken out by the appellant herein in the said suit was also dismissed. Brief facts are as under :-

3. The plaintiff claims to be the tenant of respondent no.1 and it was alleged in the plaint that respondents herein had threatened the plaintiff that they would dispossess him forcibly. Hence, suit was filed in the City Civil Court seeking injunction restraining the defendants from dispossessing the plaintiff without following due process of law. The defendants have filed their written statement and raised preliminary objection regarding maintainability of the said suit in the City Civil Court. A preliminary issue was framed and the City Civil Court held that in view of the provisions of Section 41 of the Small Causes Court Act, the suit was not maintainable. Being aggrieved by the said order, the appellant has preferred the first appeal and also appeal from order.

4. It is submitted by the learned Counsel for the appellant that a suit against the respondent no.2 was

not maintainable since it is a Government undertaking and in view of Section 4 of the Bombay Rent Act, 1948, suit could not be filed against the Bombay Port Trust. On the same ground, it was submitted that the suit is not being maintainable against the defendant no.1 in the Small Causes Court since defendant no.1 was original tenant of respondent no.2.

5. Shri Makhija, learned Counsel appearing on behalf of respondent no.2 - Bombay Port Trust submitted that in view of the provisions of Section 41 of the Small Causes Court Act, the City Civil Court did not have jurisdiction. In support of the said submission, he relied on the judgment of the Apex Court in the case of **Mansukhlal Dhanraj Jain and others, Appellants v. Eknath Vithal Ogale, Respondent, reported in AIR 1995 SC 1102.**

6. In my view, the submission made by the learned Counsel appearing on behalf of respondent no.2 will have to be accepted. The Apex Court in the case of **M.D. Jain (supra)** had occasion to consider the said Section

41 and Apex Court has held that the phrase ‘relating to recovery of possession’ as found in Section 41(1) of the Small Causes Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of the suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee plaintiff would squarely be covered by the wide sweep of the said phrase. Consequently, in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Causes Court, Bombay and and therefore, held that the City Civil Court would have no jurisdiction to entertain the suit.

7. In my view, the ratio of the said judgment squarely is applicable to the facts of the present case. There is no infirmity in the order passed by the City Civil Court.

8. Hence, the first appeal is dismissed. The Appeal from Order is also dismissed.

9. The learned Counsel for the appellant submitted that the impugned passed by this Court may be extended for a period of eight weeks. It is submitted that this Court by order dated 30.11.87 had directed the appellant to deposit an amount of Rs.1,30,500/- in this Court on or before 15th December, 1987 and that further order was passed that plaintiff should not be dispossessed except by due process of law.

10. Be that as it may, defendant no.2 is restrained from taking any steps against the appellant herein for a period of four weeks from today, in order to enable the appellant to file a suit in the Small Causes Court. If an application for injunction is filed in the Small Causes Court, the Court shall consider the application on its own merits and in accordance with law.

11. By virtue of the interim order passed by this

Court, the appellant had deposited an amount of Rs.1,30,500/- in this Court. If the suit is filed by the appellant in the Small Causes Court within six weeks from today, the said amount shall be transferred by the Registrar to the Small Causes Court. The appellant, if he files the suit in the Small Causes Court, shall inform this office within six weeks about the number of the suit so as to enable the Registrar to transfer the said amount in the Small Causes Court. If the suit is not filed within six weeks, the appellant shall be permitted to withdraw the said amount and liberty is granted to the respondent herein to take appropriate steps for recovery of the amount.

(V.M. KANADE, J.)